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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASIAN AMERICANS ADVANCING
JUSTICE – ASIAN LAW CAUCUS,

Plaintiff,

vs.

U.S. DEPARTMENT OF HOMELAND
SECURITY, IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No:

COMPLAINT

INTRODUCTION

1
2 1. Plaintiff Asian American Advancing Justice – Asian Law Caucus (“ALC”) brings
3 this action against Defendant U.S. Department of Homeland Security, Immigration and Customs
4 Enforcement (“ICE”) to compel compliance with the Freedom of Information Act, 5 U.S.C. §
5 552 (“FOIA”).

JURISDICTION

6
7 2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B)
8 and 28 U.S.C. § 1331.

VENUE AND INTRADISTRICT ASSIGNMENT

9
10 3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.
11 § 1391(e).

12 4. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c)
13 and (d) because a substantial portion of the events giving rise to this action occurred in this
14 district and division, where Plaintiff is headquartered.

PARTIES

15
16 5. Plaintiff ALC is a not-for-profit corporation established under the laws of the
17 State of California, based in San Francisco, California. ALC is a public interest organization that
18 defends the legal, civil, and human rights of members of Asian American and Pacific Islander
19 communities, with a focus on low-income and immigrant communities. ALC works to achieve
20 its mission in a number of program areas, including immigration and deportation defense,
21 through (1) provision of direct legal services, (2) strategic impact litigation, and (3) community
22 education and organizing. Accordingly, a major component of ALC’s work is to disseminate
23 information of public interest both to Asian American and Pacific Islander communities and to
24 the broader public. ALC currently represents and provides legal consultations to a number of
25 Laotian nationals on their immigration cases.

26 6. Defendant ICE is an agency of the United States Government within the meaning
27 of 5 U.S.C. § 552(f)(1). ICE is headquartered at 500 12th Street SW, Washington, D.C. 20536.
28

1 On information and belief, Defendant has possession, custody, and control of records to which
2 Plaintiff seeks access.

3 **STATEMENT OF FACTS**

4 7. On July 17, 2018, Plaintiff submitted a letter, by certified mail and by e-mail, to
5 Defendant pursuant to the FOIA requesting records from Defendant ("FOIA Request"). A true
6 and correct copy of the FOIA Request is attached hereto as Exhibit A and incorporated by this
7 reference as if fully set forth herein.

8 8. Plaintiff requested the records identified in the FOIA Request to obtain
9 information regarding the repatriation of Laotian nationals who have been ordered removed from
10 the United States and understand Defendant's actual ability to repatriate said individuals.
11 Specifically, Plaintiff seek information as to whether a repatriation agreement or policy between
12 the governments of the United States and Laos exists and whether Defendant has, in practice,
13 been able to obtain travel documents for the repatriation of Laotian nationals. The information is
14 of particular interest to Plaintiff and the constituencies it assists because, if a repatriation
15 agreement or policy exists, Laotian nationals under final orders of removal now face an elevated
16 risk of being deported. If not, then the prolonged detention of such individuals while awaiting
17 travel documents that are not reasonably likely to be issued may be unlawful.

18 9. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the FOIA requires Defendant to determine
19 whether to comply with the request within twenty (20) working days and to notify Plaintiff
20 immediately of its determination, the reasons therefor, and the right to appeal any adverse
21 determination.

22 10. The FOIA allows an agency to extend the time limit for issuance of a
23 determination by ten (10) additional working days when the agency provides written notice to
24 the requesting party, sets forth "unusual circumstances" for the extension, and provides a date by
25 which the agency expects to dispatch its determination. 5 U.S.C. § 552(a)(6)(B)(i).

26 11. By e-mail sent on August 12, 2018, Defendant acknowledged receiving Plaintiff's
27 FOIA Request on August 12, 2018. The August 12, 2018 e-mail stated that Defendant had
28 assigned the FOIA Request the case number 2018-ICFO-55423. Defendant's August 12, 2018 e-

1 mail also asserted: "Due to the increasing number of FOIA requests received by this office, we
2 may encounter some delay in processing your request." The August 12, 2018 e-mail indicated
3 that Defendant had queried the appropriate program offices within ICE for responsive records.

4 12. In its August 12, 2018 e-mail to Plaintiff, Defendant asserted that the FOIA
5 Request "seeks numerous documents that will necessitate a thorough and wide-ranging search."
6 Defendant stated in the August 12, 2018 e-mail that "ICE will invoke a 10-day extension for
7 your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B)."

8 13. On December 17, 2018, Plaintiff sent a letter, by certified mail and by e-mail, to
9 Defendant requesting that the Defendant expedite the response to the FOIA Request in every
10 way possible and requested that the Defendant respond to the letter by January 4, 2019 or to
11 provide an alternative response date.

12 14. By e-mail sent on December 20, 2018, Defendant stated: "In regards to 2018-
13 ICFO-55423 we have queried the appropriate component of DHS for responsive records. If any
14 responsive records are located, they will be reviewed for determination of releasability. We will
15 process your request as expeditiously as possible. Upon completion of the processing, all
16 documents that can be released will be made available to you at the earliest possible date. We
17 sincerely apologize for the delay you are experiencing and appreciate your continued patience."

18 15. On February 19, 2019, Plaintiff sent an e-mail to Defendant seeking an update
19 regarding the status of the FOIA Request and asking when Defendant expected to provide
20 documents in response to the FOIA Request.

21 16. By email sent on March 7, 2019, Defendant indicated that it was responding to
22 Plaintiff's February 19, 2019 e-mail and stated: "For your information, document(s) responsive
23 to your request have been located and forwarded to this office for review. We will process your
24 request as expeditiously as possible. Upon completion of the processing, all documents that can
25 be released will be made available to you at the earliest possible date. We sincerely apologize for
26 the delay you are experiencing and appreciate your continued patience."

27 17. On March 14, 2019, Plaintiff sent a letter, by certified mail and by e-mail, to
28 Defendant requesting that Defendant respond to the FOIA Request by March 29, 2019 or to

1 provide an alternative response date. As of the date of this complaint, Defendant still has not
2 provided the requested documents and has not identified a date certain by which it intends to
3 provide its determination with respect to the FOIA Request.

4 18. As of the date of this complaint, Defendant has failed to: (i) determine whether to
5 comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor;
6 (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the
7 requested records or otherwise demonstrate that the requested records are exempt from
8 production.

9 19. Pursuant to the combined thirty (30) working day statutory time limit under 5
10 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(A)(6)(B), Defendant's determination was due by
11 September 24, 2018 at the latest. Defendant's failure to make a determination within the
12 statutory time limit violates the FOIA.

13 20. Because Defendant has failed to comply with the time limits set forth in 5 U.S.C.
14 § 552(a)(6)(A)(i) and 5 U.S.C. § 552(A)(6)(B), Plaintiff is deemed to have exhausted any and all
15 administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

16 **FIRST CLAIM FOR RELIEF**

17 **(Violation of FOIA, 5 U.S.C. § 552)**

18 21. Plaintiff realleges paragraphs 1 through 20 as if fully stated herein.

19 22. Defendant violated the FOIA by failing to make a determination on Plaintiff's
20 FOIA Request within the relevant time periods in 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. §
21 552(A)(6)(B).

22 23. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5
23 U.S.C. § 552.

24 24. Plaintiff has a statutory right to receive a lawful determination from Defendant, as
25 well as to promptly receive the underlying records it seeks.

26 25. Defendant has still not made a determination on Plaintiff's FOIA Request that
27 describes the scope of the records it intends to produce or withhold and the reasons for
28 withholding any records. Defendant has not informed Plaintiff that it may appeal any specific

adverse determination within the relevant time periods in 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(A)(6)(B).

26. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of records responsive to the FOIA Request, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiffs pray that this Court:

1. Order Defendant ICE to produce, by a date certain, any and all non-exempt records to Plaintiff ALC's FOIA Request and a *Vaughn* index² of any responsive records withheld under claim of exemption;

2. Enjoin Defendant ICE from continuing to withhold any and all non-exempt records responsive to the FOIA Request;

3. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

4. Grant Plaintiff such other relief as the Court deems just and proper.

Date: April 17, 2019

Respectfully submitted,

NOSSAMAN LLP
CARL L. BLUMENSTEIN
WILLIS HON

By: /s/ Willis Hon

Willis Hon

Attorneys for Plaintiff
Asian Americans Advancing Justice – Asian
Law Caucus

² *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).